

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of:

Rexroad, John

Serial No.: 10/727,927

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For: Sheathed Shrink Net and Support Assembly

Technology Center: 3600

Group Art Unit: 3634

Examiner: Colleen Quinn

Appeal No.

APPELLANT'S REPLY BRIEF

This is a reply to Examiner's answer brief dated December 12, 2007.

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STATUS OF CLAIMS (37 C.F.R. 41.37(C)(1)(iii))

The current status of the claims is as follows:

Allowed claims – none

Objected claims – none

Cancelled claims – claims 1-11 have been cancelled.

Rejected claims – 12-19

Claims 12-19 are involved in this appeal.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL
(37 C.F.R. 41.37(C)(1)(vi))

Whether claims 12-19 are unpatentable under 35 U.S.C. §103(a) over U.S. Pat. No. 6,098,750 issued to *Reynolds* et al. (“*Reynolds*”) in view of U.S. Pat. No. 6,138,327 issued to *Powell* et al. (“*Powell*”).

REJECTION UNDER 35 U.S.C. §103(a) OVER U.S. PAT. NO. 6,098,750 ISSUED TO REYNOLDS IN VIEW OF U.S. PAT. NO. 6,138,327 ISSUED TO POWELL.

1. Reply To Examiner's Arguments Regarding Prima Facie Case Of Obviousness

On pages 4-6 of the Examiner's Answer Brief, the Examiner indicates that she has provided a prima facie of obviousness with respect to claims 12-19 of Applicant's invention. Specifically, on pages 4-5 of the Examiner's Answer brief, the Examiner gives an analysis of her reasoning for combining the *Reynolds* reference and the *Powell* reference to argue that the Applicant's invention is obvious. The Applicant respectfully asserts that this is the first time the Examiner has articulated *any* reason to combine the elements cited in *Reynolds* and *Powell*.¹ Neither of the Examiner's previous office actions (dated 04/19/2006 and 11/30/2006) provided a detailed reasoning for combining the *Reynolds* and *Powell* references. However, even with this more detailed analysis, the Examiner's reasoning for combining *Reynolds* and *Powell* still would not have prompted a person of ordinary skill in the safety net art to combine the *Reynolds* reference with the *Powell* reference to create Applicant's invention.

Combining the safety net system disclosed in *Reynolds* with the fastener disclosed in *Powell* would render the safety net system of *Reynolds* inoperable.² The U.S. Court of Customs and Patent Appeals³ has held that when a combination of references would require a substantial reconstruction and redesign of the elements shown in the prior art reference, as well as a change in the basic principles under which the prior art reference construction was designed to operate, it is *not* proper to make an obviousness rejection under 35 U.S.C. §103 based on the modified prior art reference.⁴ Moreover, the CCPA stated that the redesign

¹ See, *KSR Int'l Co. v. Teleflex*, No. 04-1350, slip op. at 15 (U.S. 4-30-2007) (holding that the analysis supporting obviousness should be made explicit and should identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the manner cited).

² See, *In re Gordon*, 733 F.2d 900, 902 (Fed. Cir. 1984) (holding that the proposed modification of a prior art invention for a finding of obviousness under §103 cannot render the prior art invention unsatisfactory for its intended purpose); *Application of Ratti*, 270 F.2d 810, 813 (CCPA 1959) (holding that the proposed modification of the prior art invention for a finding of obviousness under 35 U.S.C. §103 cannot change the principle of operation of the prior art invention).

³ *South Corp. v. U.S.*, 690 F.2d 1368, 1369 (Fed. Cir. 1982) (holding that the holding of the predecessor courts, the United States Court of Claims and the United States Court of Customs and Patent Appeals, shall be binding as precedent in the Federal Circuit).

⁴ See, *Application of Ratti*, 270 F.2d at 813 (emphasis added).

may, *by hindsight*, seem to be obvious to one having ordinary skills in the relevant art.⁵ However, the combination of prior art references must be viewed as of the time the applicant's invention was made, and *without* the benefit of the applicant's disclosure.⁶ The Supreme Court has recently reconfirmed this holding with respect to using hindsight when combining prior art references.⁷ Specifically, the Supreme Court held that the fact finder should be aware of the distortion caused by hindsight bias and must be cautious of arguments that rely upon ex post reasoning.⁸

Furthermore, it is impermissible to pick and choose from one prior art reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly teaches to one of ordinary skill in the art.⁹ In other words, the fact finder must look at the prior art references as a whole when determining obviousness.¹⁰

A. Claims 12-19

With respect to claims 12-19, the Examiner argues that it would have been obvious to connect the net and support member of *Reynolds* with the straps taught by *Powell* in order to offer a fastening strap that locks to a given diameter and provides additional gripping support with a rubberized sleeve. (Examiner's Answer Brief p. 3-4). The Examiner goes on to state that *Reynolds* teaches a variation in fastening means and *Powell* recognizes that straps of all kinds, intended for use in holding things together, have been known to mankind for centuries; thus making the combination of *Reynolds* and *Powell* obvious to one of ordinary skill in the art. (Examiner's Answer Brief p. 4). While the statements regarding what was

⁵ *See, Id.* (emphasis added).

⁶ *See, Id.*

⁷ *See, KSR Int'l Co.*, No. 04-1350 at 17.

⁸ *See, Id.*

⁹ *See, Application of Weslau*, 353 F.2d 238, 241 (CCPA 1965); *see also, In re Wright*, 866 F.2d 422, 426 (Fed. Cir. 1989) (concluding that "the PTO's attempt to show [obviousness] consists of taking statements wholly out of context and giving them meanings they would not have had to one skilled in the art having no knowledge of appellant's invention, or to anyone else who can read the specification with understanding"); *see also, Grain Processing Corp. v. American Maize-Products*, 840 F.2d 902, 907 (Fed. Cir. 1988) (stating that "[c]are must be taken to avoid hindsight reconstruction by using 'the patent in suit as a guide through the maze of prior art references, combining the right references in the right way so as to achieve the result of the claims in suit'"); *ATD Corp. v. Lydall*, 159 F.3d 534, 546 (Fed. Cir. 1998) (stating that a "[d]etermination of obviousness can not be based on the hindsight combination of components selectively culled from the prior art to fit the parameters for the patented invention.").

¹⁰ *See, In re Evamega*, 829 F.2d 1110, 1112 (Fed. Cir. 1987) (indicating that "in determining obviousness, a prior patent must be considered in its entirety").

stated in the prior art are mostly accurate, the combination of *Reynolds* and *Powell* to create Applicant's invention is based on a parsing of the two references for the elements that fit the parameters of Applicant's invention. As discussed above, the Courts have held this to be an impermissible use of hindsight.

Specifically, the Examiner uses the fact that *Reynolds* teaches a variation in the type of fasteners that can be used in the invention with the fact that *Powell* discloses that straps of all kinds have been known to mankind for centuries to conclude that the combination of the two would render Applicant's invention obvious under 35 U.S.C. §103. However, the Examiner fails to point out that when the disclosures of both *Reynolds* and *Powell* are considered in their *entireties*, the combination of the two would render *Reynolds* inoperable and, therefore, Applicant's invention would not be obvious.

In particular, on page 4 of the Examiner's Answer Brief, she indicates that:

[a]lthough Reynolds et al. mention the fasteners to be 'spring snap links', (sic) the phrase '*or the like*' following 'spring snap links' (Col. 2, line 38) demonstrates that the net is not limited to being fastened with spring snap links and that other forms of fasteners may be used, so long as the substitute fastener form still connects the net to the support structure, allowing for one of ordinary skill in the art, (sic) to select alternative forms of fasteners. (Examiner's Answer Brief p. 4) (emphasis in original).

The Examiner's above statement fails to include the important detail that the fastener form must also allow the *Reynolds*' safety net to function *the same way* as originally disclosed.¹¹ This means that the safety net disclosed in *Reynolds* must still be able to slide along the vertical posts (20) and (30) to a position lower than a mezzanine shelf. (*Reynolds* Col. 2, lines 62-66). As such, the phrase "or the like" following the disclosure of the spring snap links, limits the fastener forms to those that allow the safety net to slide along the vertical posts.

Moreover, the ordinary dictionary meaning of the phrase "the like" is "one similar to or like another."¹² This proves that the phrase "or the like" in *Reynolds* means that any fastener variation used in place of the spring snap link disclosed in *Reynolds* must allow the free movement of the safety net along the vertical posts (20) and (30) because any fastener variation used must function similarly to spring snap links. As such, the Applicant's

¹¹ See, *In re Gordon*, 733 F.2d at 902; *Application of Ratti*, 270 F.2d at 813.

¹² like. (n.d.). *The American Heritage® Dictionary of the English Language, Fourth Edition*. Retrieved January 10, 2008, from Dictionary.com website: <http://dictionary.reference.com/browse/like>

statement on page 10 of the originally filed Appeal Brief that *Reynolds* “requires the use of a fastener such as a spring snap link” is correct.

Further, the strap that is disclosed in *Powell* teaches away from the intended use of the fastener disclosed in *Reynolds*. Specifically, the strap disclosed in *Powell* provides “flexibility, stretchability, and gripability or engageability.” (*Powell*, Col. 3, lines 37-38). None of these adjectives describe that the strap disclosed in *Powell* allows free movement of objects that it bundles together. Rather, these descriptors indicate just the opposite. The ordinary dictionary definition of the word “gripability” is the ability “to secure and maintain a tight hold on; seize firmly.”¹³ Additionally, the ordinary dictionary definition of “engageability” is the ability “to interlock or cause to interlock.”¹⁴ Securing and maintaining a tight hold on and interlocking are the opposite of allowing free movement. Anything that is bound by the strap disclosed in *Powell* is tightly secured and/or interlocked *by definition*. Thus, the combination of the safety net system disclosed in *Reynolds* with the fastener disclosed in *Powell* would cause the safety net in *Reynolds* to be tightly secured to the vertical posts (20) and (30). Because this would render *Reynolds* inoperable as intended, it would not be obvious to one of ordinary skill in the art at the time of the invention to combine *Reynolds* and *Powell* to create Applicant’s invention.

In order to explain the inoperability of combining *Reynolds* and *Powell* in the original Appeal Brief, the Applicant indicated that the spring snap link fastener is not designed to permanently lock two items together and included a figure depicting a standard spring snap link.¹⁵ (Applicant’s Appeal Brief, p. 11). Based on this statement, the Examiner, in her Answer Brief, states that

the applicant argues that this supposed fastener of Reynolds is not design (sic) to permanently lock two items together. The examiner would like to note that the applicant is not claiming any items are ‘permanently’ locked together, and that the Powell (sic) reference, not the Reynolds reference was used to anticipate the fastener features. (Examiner’s Answer Brief p. 5).

¹³ grip. (n.d.). *The American Heritage® Dictionary of the English Language, Fourth Edition*. Retrieved January 10, 2008, from Dictionary.com website: <http://dictionary.reference.com/browse/grip>

¹⁴ engage. (n.d.). *The American Heritage® Dictionary of the English Language, Fourth Edition*. Retrieved January 10, 2008, from Dictionary.com website: <http://dictionary.reference.com/browse/engage>

¹⁵ The Examiner has indicated on page 5 of her Answer Brief that Fig. 1 on page 11 of Applicant’s Appeal Brief is not from the *Reynolds* patent. Applicant did not intend for it to appear that this figure was from the *Reynolds* reference, but rather included it to show a standard spring snap link and how it physically differs from the fastener disclosed in *Powell*.

However, it is immaterial whether the Applicant claims any items that are permanently locked together.

As previously discussed, the determination for combining prior art references turns on whether the combination of the two references would render one inoperable as intended.¹⁶ Here, Applicant was showing that because *Powell* permanently locks items together, it could not be combined with *Reynolds* without destroying the intended function of *Reynolds*. Thus, it is irrelevant whether or not Applicant claims that any items are permanently locked together. The Examiner has not employed the correct analysis to this argument, nor the correct test for determining whether *Reynolds* can be properly combined with *Powell*.

In addition, on page 6 of the Examiner's Answer Brief, the Examiner indicates that the Applicant's assertion that the fastener disclosed in *Powell* does not allow for bundled items to move relative to each other is a false statement. (Examiner's Answer Brief p. 6). The Examiner goes on to argue that the "fastener of Powell can be tightened to a variety of different diameters, depending on how tightly the user locks the straps together." (Examiner's Answer Brief, p. 6). However, nowhere in *Powell* is it disclosed that that the fastener of *Powell* can be tightened to any diameter desired by the user. Rather, *Powell* only states that the strap provides "flexibility, stretchability, and gripability or engageability." (*Powell*, Col. 3, lines 37-38). As discussed above, the definitions of these descriptive words describe a strap that secures and maintains a tight hold on an object.

In the same paragraph on page 6 of the Examiner's Answer Brief, the Examiner asserts that "the applicant does not claim any items need or need not be movable after being fastened, so whether or not the prior art references allow for more flexibility than the claimed invention is irrelevant." (Examiner's Answer Brief, p. 6). Again, this is a misstatement of the argument for determining whether two references can be combined to show the Applicant's invention is obvious. What actually is irrelevant is that the *Applicant does not claim any items need or need not be movable after being fastened*. The relevant test is whether when combined, the two prior art references would still operate as intended. Here, as explained above, when combined with *Powell*, *Reynolds* would become inoperable as intended. Therefore, for all of these reasons, Applicant respectfully requests that the panel reverse the Examiner's findings and allow claims 12-19 to issue.

¹⁶ See, *In re Gordon*, 733 F.2d at 902; *Application of Ratti*, 270 F.2d at 813.

2. The Cited Prior Art Differs From Applicant's Claims

A. Claims 12 and 16

On pages 6-7 of the Examiner's Answer Brief, the Examiner asserts that:

the applicant argues that Reynolds et al. do not disclose all the claimed features in the applicant's claims 12 and 16. First the examiner would like to note that Reynolds is not used to anticipate *all* of the features in the applicant's claims 12 and 16. Reynolds is referenced as anticipating *most* of the features of the applicant's claims, but it is the combination of Reynolds et al. and Powell et al. that together anticipate all of the features of the applicant's claims. (Examiner's Answer Brief, p. 6-7) (emphasis in original).

However, the Applicant would like to note that it is not arguing that *Reynolds* does not disclose all of the claimed elements in Claims 12 and 16. Rather, as clearly indicated in Applicant's Appeal Brief, the Applicant is arguing that the combination of the elements of *Reynolds* and *Powell* that the Examiner has cited differ from the elements in Applicant's claims 12 and 16. Thus, the combination of these elements would not render Applicant's invention obvious.

Further, the Examiner states that "the applicant is arguing that the Reynolds reference does not anticipate the fastener features of the claims. This argument is irrelevant since the *Powell* reference, *not* the *Reynolds* reference, was used to anticipate the specific fastener features." (Examiner's Answer Brief, p. 7) (emphasis in original). However, as previously discussed, the Applicant was not arguing that the *Reynolds* reference anticipates its claims. Rather, the Applicant was properly applying the test for obviousness and showing how the combination of the *Reynolds* safety net with the *Powell* fastener would impermissibly render the *Reynolds* safety net inoperable as originally intended. As such, it is immaterial whether or not the *Powell* reference rather than the *Reynolds* reference was used to anticipate the specific fastener features.

The Examiner goes on to argue that:

[t]he applicant argues that Powell wouldn't allow for bundled items to move with respect to each other. Aside from the fact that that statement totally depends on what items are being bundled together, it is also false. As explained above, Powell et al. teach a stretchable and flexible (col. 3, lines 37-38) strap *that can be adjusted to different diameters, using both the flexibility of the strap and the various locking locations, allowing for either a tight fit or a slightly looser fit, allowing for the sliding of the bundled items, if the user so desires such a fit.* (Examiner's Answer Brief, p. 7) (emphasis added).

However, the strap disclosed in *Powell* is described as providing “flexibility, stretchability, and gripability or engageability.” (*Powell*, Col. 3, lines 37-38). Therefore, as thoroughly explained above, *Powell* teaches a strap that secures and maintains a tight hold on an object. The fact that the strap is also stretchable and flexible merely discloses that the strap can be used to fit around relatively larger objects.

The Examiner’s argument that the “strap can be adjusted to different diameters, using both the flexibility of the strap and the various locking locations, allowing for either a tight fit or a slightly looser fit, allowing for the sliding of bundled items, if the user so desires such a fit” is flawed. Specifically, *Powell* does not disclose that the strap can be adjusted to different diameters. Moreover, the strap disclosed in *Powell* cannot allow for the sliding of bundled items. The *Powell* reference teaches a strap that has gripability and engageability. As such, by definition, a strap with gripability would not allow the bundled items to slide. Therefore, the Applicant’s statement that the strap disclosed in *Powell* would not allow for bundled items to move with respect to one another is accurate.

The Examiner goes on to argue that:

“the Reynolds patent discloses a border, the outermost warp and weft members of the net body, which surround the perimeter of the entire net. . . . In the Reynolds patent the outer most warp and weft members form a boarder (sic) around the outermost edge, or perimeter, of the net. Therefore, the boarder (sic) of Reynolds anticipates the border claimed by the applicant.” (Examiner’s Answer Brief, p. 8).

The Examiner’s argument here is also flawed. In particular, a careful reading of Applicant’s claims 12 and 16 shows that border and the perimeter are *two separate and distinct elements*. Below, the language of claim 16 (representative of claim 12) is produced below.

Claim 16: An apparatus for supporting a net along a support member comprising:

- a support member having a generally elongated extend and having a given diameter;
- a plurality of lock fasteners which have a free end which connects to an opposite end to create a variably constraining diameter when pulled tight;

a net having a *border that surrounds the perimeter of the net* with warp and weft members extending generally perpendicularly thereto to define spaces therebetween;

said border being *stretched* along said support member and fastened to said support member using said lock fasteners by wrapping said fasteners about said net border and said support member in said spaces and pulling the free end of said fastener through a locking mechanism to lock the fastener in place with the border and the support member. (Applicant's Claim 16) (emphasis added).

As seen, the Applicant's claim 16 claims "a border that surrounds the perimeter of the net. . . ." (Applicant's Claim 16). The border and the perimeter are two distinct elements. Particularly, the border surrounds the perimeter. If these were the same element as asserted by the Examiner, there would be no need to specifically point out that the border surrounds the net.

In addition, the Applicant pointed out in its Appeal Brief that a border is defined as "a part that forms the outer edge of something"¹⁷ and a perimeter is defined as "the outer limits of an area."¹⁸ These are distinct definitions that clearly indicate that a perimeter is not the same thing as a border.

Moreover, the Examiner states that:

[t]he applicant argues that the net of Reynolds et al. is 'suspended' rather than 'stretched' along the support member. The examiner fails to see these two attachment forms as being very critically different in the immediate case, and asserts that the border of Reynolds is certainly 'stretched' along the support member, as can be seen in Figure 1 of Reynolds. Though the net may be suspended from the support, it is also clearly stretched as can be seen from the extended anchoring points along the border where fasteners are used to attach the net to the support. The applicants (sic) argument that Reynolds et al. teach suspending the net is only half correct, as the applicant fails to mention that by suspending the net by its border, the net is also stretched along the support, thereby anticipating the applicant's claims. (Examiner's Answer Brief p. 8) (emphasis in original).

¹⁷ border. (n.d.). *The American Heritage® Dictionary of the English Language, Fourth Edition*. Retrieved January 11, 2008, from Dictionary.com website: <http://dictionary.reference.com/browse/border>

¹⁸ perimeter. (n.d.). *The American Heritage® Dictionary of the English Language, Fourth Edition*. Retrieved January 11, 2008, from Dictionary.com website: <http://dictionary.reference.com/browse/perimeter>

Again, the Examiner's argument is flawed. *Reynolds* specifically discloses that "[t]he safety net **60** is *suspended* between the posts **20** and **30**, the top arm **40** and the bottom assembly **50** by spring snap links **95** or the like." (*Reynolds*, Col. 2, lines 36-38). There is no disclosure in *Reynolds* to suggest that the net is stretched, as in Applicant's Claims 12 and 16. In contrast, Applicant's Claims 12 and 16 state that "said border *being stretched along said support member* and fastened to said support member using said lock fasteners by wrapping said fasteners about said net border and said support member in said spaces and pulling the free end of said fastener through a locking mechanism to *lock the fastener in place with the border and the support member*." (Applicant's Claims 12 and 16) (emphasis added). In Applicant's invention, the border is stretched along the support member and locked into place with the fastener and the support.

The Examiner states that she fails to see these two attachment forms as being very critically different in the immediate case. However, these two attachment forms (i.e. stretched vs. suspended) are in fact very critically different. As stated in Applicant's Appeal Brief, the definition of suspend is "to hang so as to allow free movement."¹⁹ In contrast, the definition of stretch is "to cause to extend from one place to another or across a given space."²⁰ The safety net in *Reynolds* is suspended between the posts, the top arm, and the bottom assembly so that it can freely move via the spring snap link fasteners as required. The border in Applicant's invention is stretched along the support member so that the border is locked into place with the fastener and the support. As such, these two attachment forms are very different.

Based on the differences in the teachings between *Reynolds* as combined with *Powell* and Applicant's claims 12 and 16, it would not have been obvious to one of ordinary skill in the art at the time the invention was made to combine *Reynolds* with *Powell* to create Applicant's claims 12 and 16.

B. Claims 13 and 17

The Examiner's argument in the Answer Brief with respect to claims 13 and 17 is completely inconsistent with the Applicant's argument in the originally filed Appeal Brief.

¹⁹ suspend. (n.d.). *The American Heritage® Dictionary of the English Language, Fourth Edition*. Retrieved January 11, 2008, from Dictionary.com website: <http://dictionary.reference.com/browse/suspend>

²⁰ stretch. (n.d.). *The American Heritage® Dictionary of the English Language, Fourth Edition*. Retrieved January 11, 2008, from Dictionary.com website: <http://dictionary.reference.com/browse/stretch>

Specifically, the Examiner indicates that “the applicant argues that the boarder (sic) of the net taught by Reynolds et al. is not rectangular. . . .” (Examiner’s Answer Brief, p. 8). However, the Applicant argued just the opposite. The Applicant stated, “[w]hile Fig. 1 of *Reynolds* does show a net in a generally rectangular shape, it does not disclose all of the elements of Applicant’s claims 13 and 17.” (Applicant’s Appeal Brief, p. 15) (emphasis added). In fact, the Examiner did not properly respond to Applicant’s argument with respect to claims 13 and 17. On page 15 of Applicant’s originally filed Appeal Brief, the Applicant argued that: 1) *Reynolds* does not disclose that the long sides of a border are flat against a support; and 2) all of the sides of the net disclosed in *Reynolds* are fastened to the support members.

With respect to claims 13 and 17, the Applicant claims that the rectangular shape of its border is:

defined by first and second spaced apart long sides extending parallel to one another and first and second short sides each connected to and extending generally perpendicular to the first and second long sides and extending parallel to one another and locating the long sides of said border flat against said support member and securing said border to said support member with said lock fasteners. (Applicant’s claims 13 and 17).

As clearly seen from Fig. 1 of *Reynolds*, all of the sides of the net (60) are fastened to the support members (20, 30, 40, and 50). This differs from Applicant’s safety net system as defined in its claims 13 and 17. Applicant’s claims 13 and 17 make it clear that only the long sides of the safety net border are fastened to the support member. As stated above, the Examiner never responded to this point, presumably because she concedes this fact.

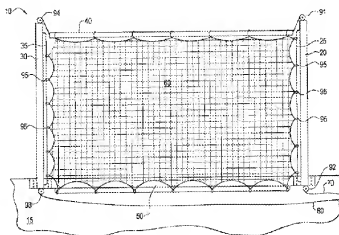


FIG. 1

Moreover, the Examiner argues that:

Although Reynolds et al. may not disclose the border laying flat against the support, the use of the strap taught by Powell et al., and certainly the amount of straps used, would allow a user to secure the border tightly against a supporting member which is why the fastener of Powell et al. was used for this feature, and not Reynolds et al. (Examiner's Answer Brief, p. 9).

As previously stated, hindsight cannot be used to pick and chose the pieces of prior art inventions that when combined would render an applicant's invention obvious.²¹ It does not matter that the Examiner has equated the fastener disclosed in *Powell* with the net disclosed in *Reynolds*. What is important is that if the fastener disclosed in *Powell* were combined with the net disclosed in *Reynolds*, *Reynolds* would not operate as intended.²² As such, the combination of *Reynolds* and *Powell* do not render Applicant's claims 13 and 17 obvious under 35 U.S.C. §103. Additionally, because claims 13 and 17 are dependent claims that add further limitations to independent claims 12 and 16, respectively, they should be allowed in dependent form because independent claims 12 and 16 are not rendered obvious by *Reynolds* in view of *Powell*.²³

C. Claims 14 and 18

With respect to Applicant's claims 14 and 18, the Examiner argues that:

The combination of Reynolds et al. and Powell et al. anticipate all of the features of the applicant's claimed invention, including those of claims 14 and 18, rendering the claims *not* allowable. Specifically the Powell patent teaches a rubberized sleeve portion, 18, about the lock fastening straps, providing a gripping (sic) and engaging area (col. 3, lines 37-38) for bundling items together. (Examiner's Answer Brief, p. 9) (emphasis in original).

Again, this is an improper parsing of the prior art to render Applicant's claims obvious.²⁴ The Examiner uses the fact that the fastener in *Powell* includes a portion that is made of silicone and provides flexibility, stretchability, gripability, and engagability, to state that *Powell* teaches a rubberized sleeve portion about the lock fastening straps for *providing a gripping and engaging area* for bundling items together. (*Powell*, Col. 3, lines 37-38) (Examiner's Answer Brief, p. 9) (emphasis added). This statement by the Examiner is essentially an admission

²¹ See, *Grain Processing Corp.*, 840 F.2d at 907.

²² See, *In re Gordon*, 733 F.2d at 902.

²³ See, *In re Johnson*, 589 F.2d 1070, 1080 (CCPA 1978).

²⁴ See, *Grain Processing Corp.*, 840 F.2d at 907.

that *Reynolds* when combined with *Powell* will be rendered inoperable. Because the net in *Reynolds* moves freely up and down the support members²⁵, it would not work properly if it were attached to the support members with a fastener that provides gripability and engageability.²⁶ Therefore, because the intended function of *Reynolds* would be rendered inoperable by the combination with *Powell*, the two references cannot be combined and cannot render Applicant's claims 14 and 18 obvious.

Moreover, because claims 14 and 18 are dependent claims that add further limitations to claims 13 and 17, respectively, they should be allowed in dependent form because claims 13 and 17 are not rendered obvious by *Reynolds* in view of *Powell*.²⁷

D. Claims 15 and 19

With regard to claims 15 and 19, the Examiner argued that:

the Powell patent teaches a one way latch mechanism (locking tab of 26) as part of the locking mechanism that mates with the other end of the fastener strap. (Examiner's Answer Brief, p. 10).

However, it is unclear from the Examiner's Answer Brief and the *Powell* reference itself where it is disclosed that there is a locking tab on element 26 of *Powell*. Specifically, *Powell* refers to element 26 as the second end (26) of the first segment (16). (*Powell*, Col. 3, lines 43-44). Nowhere in the *Powell* reference is it disclosed that there is one way latch mechanism on the fastener.

Further, because claims 15 and 19 are dependent claims that add further limitations to claims 14 and 18, respectively, they should be allowed in dependent form because claims 14 and 18 are not rendered obvious by *Reynolds* in view of *Powell*.²⁸

Conclusion

For all of the above reasons stated, Applicant respectfully requests that claims 12-19 of its Applicant be allowed. Specifically, *Reynolds* cannot be combined with *Powell* to render Applicant's claims 12-19 obvious under 35 U.S.C. §103.

²⁵ *Reynolds*, Col. 2, lines 52-67.

²⁶ See, Definitions of "grip" and "engage" above.

²⁷ See, *In re Johnson*, 589 F.2d at 1080.

²⁸ See, *Id.*

Respectfully submitted,

Date: 01/22/2008

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